

Subpart

Applications for Medicaid.

12VAC30-110-1350. Definitions.

"Applicant" means a person who has directly or through his authorized representative made written application for Medicaid at the Department of Medical Assistance Services' Central Processing Unit or at the local social services department serving the locality in which he is a resident, or, if institutionalized, the locality in which he last resided outside an institution.

"Authorized representative" means a person who is authorized to conduct the personal or financial affairs for an individual who is age 18 or older.

"Caretaker relative" means an individual who is age 18 or older, who is not [~~a~~- the] parent [of], but who is related to [~~a~~ the] child by blood or marriage and who lives with and assumes responsibility for day-to-day care of the child in a place of residence maintained as his or their own home.

"Competent individual" means a person who has not been judged by a court to be legally incapacitated.

“Conservator” means a person appointed by a court of competent jurisdiction to manage the estate and financial affairs of an incapacitated individual.

"Family substitute representative" means a spouse or designated relative who is willing and able to take responsibility for the individual's personal or financial affairs. The relatives who may be substitute representatives are, in this preferred order, the individual's adult child, parent, adult sibling, adult grandchild, adult niece or nephew, aunt or uncle.

“Guardian” means a person appointed by a court of competent jurisdiction to be responsible for the personal affairs of an incapacitated individual, including responsibility for making decisions regarding the person’s support, care, health, safety, habilitation, education, and therapeutic treatment, and if not inconsistent with an order of commitment, residence.

"Incapacitated individual" means a person who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements of his health, care, safety, or therapeutic needs without the assistance or protection of a guardian, or (ii) manage property or financial affairs or provide for his or her support or

for the support of his legal dependents without the assistance or protection of a conservator.

"Legal emancipation" means the minor has been declared emancipated by a court of competent jurisdiction. A married minor is not emancipated unless a court has declared the married minor emancipated from his parents.

12VAC30-110-1360. Right to apply.

A competent individual who is at least 18 years of age cannot be refused the right to complete an application for himself and cannot be discouraged from asking for assistance for himself under any circumstances.

12VAC30-110-1370. Applicant's signature.

The applicant must sign a State approved official application form, even if another person fills out the form, unless the application is filed and signed by the applicant's parent, caretaker relative, legal guardian or conservator, attorney-in-fact or authorized representative. If the applicant cannot sign his name, but can make a mark, the mark must be correctly designated and witnessed by one person.

12VAC30-110-1380. Authorized representative for individual age 18 or older.

A. Patients in the Department of Mental Health, Mental Retardation and Substance Abuse facilities may have applications submitted on their behalf by employees of the DMHMRSAS.

B. The authorized representative of an incapacitated individual shall be the individual's legally appointed guardian or conservator.

C. A competent individual may sign an application on his own behalf or may designate anyone to be his authorized representative to file a Medicaid application on his behalf. If a competent individual wants another person to file a Medicaid application for him, he must designate the authorized representative in a written statement that is signed by the individual applicant. The authorized representative statement is valid for the life of the Medicaid application or until the applicant changes or removes his authorized representative. If the application is approved, the authorized representative statement is valid for any subsequent review and redetermination until the applicant's Medicaid eligibility is cancelled. If the applicant reapplies for Medicaid after Medicaid is cancelled, he must sign the application or provide a new authorized representative statement.

D. When an individual has given power-of-attorney to another person that includes the power to conduct the applicant's business affairs, the attorney-in-fact is considered the applicant's authorized representative.

E. For an individual who has not been determined by a court to be legally incapacitated, but who is reported to be mentally unable to sign his name or to make a mark, an application may be signed under the following circumstances:

1. When it is reported that an individual cannot sign the application and the individual does not have an attorney-in-fact, an authorized representative or a family substitute representative, the individual's inability to sign the application must be verified by a written statement from the individual's physician that the individual is mentally unable to sign and file a Medicaid application because of the individual's diagnosis or condition.

2. If the individual does not have an attorney-in-fact and has not signed a statement authorizing another person or organization to apply for Medicaid on his behalf, the applicant's spouse will be considered to be the individual's authorized representative. If the individual is not married or is estranged from his spouse or his spouse is unable to represent him, the individual's authorized representative shall be a family substitute representative.

3. Treatment of an individual who is unable to sign and who has no authorized representative or family substitute representative:

- a. When motion to appoint a guardian or conservator has been filed with the court, but a final determination has not been ordered.

When an individual's physician has verified that he is unable to sign the Medicaid application and the individual has no legal representative, a determination of Medicaid eligibility shall not be completed until a guardian or conservator has been appointed. Any application filed on behalf of such individual shall be held in pending status until the appointment of a legal guardian or conservator. The eligibility worker shall mail the legal guardian or conservator a copy of the Medicaid application. The legal guardian or conservator shall have ten working days after appointment to sign and return the Medicaid application and documentation of the guardian or conservator's appointment. If the application has not been signed by the deadline, eligibility for Medicaid shall be denied.

- b. When motion to appoint a guardian or conservator has not been filed with the court. When a motion to appoint a guardian or conservator has not been filed with the court, the eligibility worker shall refer the individual to the Adult Protective Services unit in the local department of social services. The Medicaid application shall be held in pending status until the Adult Protective Services

investigation is complete. If the completed Adult Protective Services investigation concludes that guardianship proceedings will not be initiated, the application must be signed by the applicant or the applicant must sign a statement designating an authorized representative. If after 10 working days, the application is not signed, eligibility for Medicaid shall be denied.

12VAC30-110-1390. Authorized representative for children under 18 years of age.

A. Patients under 18 years of age in facilities operated by the DMHMRSAS may have applications submitted by employees of the DMHMRSAS.

B. A minor child under 18 years of age who is a parent may apply for Medicaid for his or her own child.

C. An authorized employee of the public or private child placing agency that has custody of the child must sign the Medicaid application for a child under 18 years of age that is in foster care.

D. A child applicant who is under 18 years of age is not legally able to sign a Medicaid application for himself unless he is legally emancipated from his parents. If the child applicant is not legally emancipated, his parents shall sign the application on the child applicant's behalf. If the child applicant is married and the child applicant's spouse is 18 years of age or older, the spouse may sign the application on the child applicant's behalf.

If the child applicant does not live with a parent or spouse who is 18 years of age or older, the adult who has legal custody or who is the legal guardian of the child applicant, or the caretaker relative with whom the child applicant lives must sign the application. A child applicant's parent, guardian, legal custodian or caretaker relative may designate an authorized representative to complete a Medicaid application on behalf of the child applicant. The authorization must be in writing in accordance with 12VAC30-110-1380.

E. If the child applicant has no adult guardian, adult caretaker relative, or legal custodian, then the caregiver for the child applicant is responsible for seeking custody or guardianship of the child applicant:

1. If a motion has been filed in court to appoint a guardian or seek legal custody of the child, the Medicaid application shall be held in a pending status. If verification is received within 10 working days that court action has been initiated, the application will be continued until the guardian is appointed or custody is awarded. When the guardian has been appointed or custody awarded, the eligibility worker must provide the Medicaid application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by either 10 day deadline, Medicaid eligibility shall be denied.

2. If guardianship or custody procedures have not been filed with the court, the eligibility worker must refer the child to the appropriate child welfare service worker. The application for Medicaid shall be held in a pending status until the service investigation is completed and any court proceedings are completed. If the court emancipates the child, the child must sign the application and return it to the eligibility worker within 10 working days. If a guardian is appointed or custody awarded, the eligibility worker must provide the Medicaid application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by the deadline, Medicaid eligibility shall be denied.

12VAC30-110-1395. Authorized representative for a deceased applicant.

An application may be made on behalf of a deceased person by his guardian or conservator, attorney-in-fact, executor or administrator of his estate, his surviving spouse, or his surviving family member, in this order of preference: adult child, parent, adult sibling, adult niece or nephew or aunt or uncle. Such application must be filed within the three-month period subsequent to the month in which the death occurred if the deceased applicant received a Medicaid-covered service on or before the date of death and the date of service occurred within a month covered by the Medicaid application.

12VAC30-110-1396. Persons prohibited from signing an application.

An employee of, or an entity hired by, a medical service provider who could obtain Medicaid payments shall not sign a Medicaid application for a deceased individual or on behalf of an individual who cannot designate an authorized representative.

CERTIFIED: I certify that this regulation is full, true, and correctly dated.

2/25/03
Date

/s/ P. W. Finnerty
Patrick W. Finnerty, Director
Department of Medical Assistance Services